IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1050 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HASANBHAI AMIRBHAI KHOKHAR

Versus

STATE OF GUJARAT

Appearance:

MR MAHENDRA K PATEL for Petitioner

MR ND GOHIL ADDL. PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA

Date of decision: 22/06/2001

ORAL JUDGEMENT

This is yet another case of train robbery wherein the appellant accused Hansabhai Amirbhai Khokhar, who was tried for the offence under Sections 394 and 397 of the

Indian Penal Code and Section 135 of the Bombay Police Act was found guilty for the aforesaid offences and sentenced to suffer rigorous imprisonment for 4 years and to pay a fine of rs. 2000, in default to further undergo simple imprisonment for six months for each offence. However, both the sentences were ordered to run concurrently.

2. In this case, record and proceedings were called for and after perusal of the same, learned Counsel Ms. Banna Datta for the appellant accused three submissions.

2.1 Firstly, she submitted that the learned Sessions Judge committed an error in relying upon the evidence of the complainant because there was a material contradiction in the evidence of the complainant who has not stated in his evidence before the court that at the time of incident the accused slapped him on his cheek, whereas it was his case before the Police in the first information lodged by him that the accused slapped him.

It is true that the complainant has not stated in his evidence about the slap being given to him, but the medical certificate which is produced at Ex.17 shows that when he was examined on 26.3.1993 within less than 3 hours of the incident, tenderness over his left cheeck was found. Thus, it clearly supports the case of the complainant that he was slapped. Merely because he had omitted to mention in his evidence, that would not be a ground to disbelieve his evidence. such an omission cannot be said to be a material omission which would destroy the evidence of the complainant, which is otherwise found to be reliable by the learned trial Judge. Having carefully gone through his evidence, it is clear that he has not at all been shaken in his cross-examination. His evidence is duly corroborated by other witnesses including panch witnesses and Police witnesses. therefore, this submission of Ms. Banna Datta has to be rejected and it is rejected.

2.2 Ms. Datta then submitted that the panch witness Ishwarbhai Dalubhai - P.W 2 clearly admitted in his cross-examination that when he had gone to the Police Station, currency notes of Rs. 4600 and knife were lying there on the table. She therefore submitted that the accused should be given benefit of doubt.

In his chief-examination he has clearly supported the prosecution case about the notes of Rs. 4600 and knife being recovered from the accused. I fail to understand that how this version in the cross-examination

that when he had gone to the Police Station, notes of Rs. 4600 and knife were lying there on the table would help the accused in any way. In fact he has not at all been shaken on material points in his cross-examination. Hence, this second submission of Ms. Datta is also rejected.

2.3 Last submission made by Ms. Datta was that evidence of Chandubhai Bhavanbhai P.W 3 is not reliable because he has clearly stated in his evidence that the material which was found from the accused belongs not only to the complainant, but also to the other witnesses. Therefore, the accused should be given benefit of doubt.

Chandubhai Bhavanbhai P.W 3 is a Police Constable posted in Railway. He was on duty at the time when the incident took place and he caught the accused there and then and immediately produced him before his higher officer Shri Chandrakant Bachubhai Gandhi P.W 5. From the possession of the accused, a knife and currency notes of Rs. 4600 looted by the appellant accused from the complainant was found alongwith other materials. In that context if P.W Shri Chandubhai stated that materials belonging to other persons was also found, that would not destroy the prosecution case.

At the fag end of the argument, she submitted that those other witnesses were not examined. When the evidence of the complainant is found reliable, which is duly corroborated by the independent witnesses like panch and the Police Constable who caught the accused there and then, then it is not necessary for the prosecution to go on examining number of witnesses.

3. Having carefully gone through the impugned judgement and order of conviction and sentence passed by the learned Sessions Judge, I do not see any reason to interfere with the same because the prosecution in this case has proved its case against the accused beyond reasonable doubt.

4. On the point of sentence also it cannot be said that the sentence of 4 years RI is very harsh. These types of offences of train robbery are on increase day by day and therefore, it is high time for the Court not to take liberal view in such cases and reduce the sentence. In fact, the sentence of rigorous imprisonment of 4 years cannot be said to be harsh.

In view of the above discussion, this appeal fails and is dismissed.

(B.J.Shethna,J.)

*/Mohandas